

## United States Postal Service

## § 958.18

this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) *Failure to prosecute or defend.* If a party fails to prosecute or defend an action under this part, the Presiding Officer may dismiss the action, or enter an order of default and an Initial Decision.

(e) *Failure to file timely.* The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

### § 958.14 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

### § 958.15 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

### § 958.16 Transcript of proceedings.

Testimony and argument at oral hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the

parties at such rates as may be fixed by contract between the reporter and the Postal Service.

### § 958.17 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written Initial Decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relies upon in determining whether the respondent is liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, and, if liability is found, shall set forth the amount of any civil penalties, clean-up costs and/or damages imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her Initial Decision. A party may, in accordance with § 958.18, appeal an adverse Initial Decision to the Judicial Officer. Unless a party timely appeals in accordance with § 958.18, the Presiding Officer's Initial Decision, including the findings and determinations, becomes the final agency decision.

### § 958.18 Appeal of initial decision to Judicial Officer.

(a) *Notice of appeal and supporting brief.* A party may appeal an adverse Initial Decision by filing, within 30 days after the Presiding Officer issues the Initial Decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period but only if the party files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(1) The Notice of Appeal must be accompanied by a written brief specifying the party's exceptions, and any reasons for such exceptions, to the Presiding Officer's Initial Decision.

(2) Within 30 days of receiving the party's brief, the opposing party may file with the Judicial Officer a response to the specified exceptions to the Presiding Officer's Initial Decision.

(b) *Form of review.* Review by the Judicial Officer will be based entirely on the record and written submissions.